



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 12/04/2005 (Per: JTK)



Appendix A ... Part 05 of 16

The 2005 drafting file for LRB 05-2978/11

has been copied/added to the 2005 drafting file for

LRB 05-3956 (SB 426)

The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

This cover sheet was added to rear of the original 2005 drafting file. The drafting file was then returned, intact, to its folder and filed.



DNOR
State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2978/A *2*

JTK:wlj:jz

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stays.

wanted MN 8/22 - PM

2005 BILL

(regenerati)
1 AN ACT *to repeal* 108.04 (1) (e) and 108.04 (7) (f); *to renumber* 108.22 (1) (ad);
2 *to amend* 108.02 (12) (a), 108.02 (12) (dm), 108.02 (12) (dn), 108.02 (15) (j) 5.
3 and 6., 108.02 (21e) (intro.), 108.04 (1) (b) 1., 108.04 (1) (b) 3. (intro.), 108.04 (1)
4 (c), 108.04 (13) (c), 108.04 (13) (e), 108.04 (16) (b), 108.04 (16) (c) 2., 108.05 (3)
5 (a), 108.068 (2), 108.09 (2) (bm), 108.09 (4s), 108.151 (4) (b), 108.16 (8) (e) 1.,
6 108.16 (8) (h), 108.17 (2g), 108.18 (1) (a), 108.18 (2) (d), 108.205 (2), 108.22 (1)
7 (b), 108.22 (1) (c), 108.22 (1m), 108.22 (2), 108.22 (8) (b), 108.225 (1) (a) and
8 108.24 (2); and *to create* 108.02 (15) (j) 7., 108.04 (13) (g), 108.151 (7), 108.16
9 (6w) and (6x), 108.16 (8) (em), 108.16 (8) (im), 108.16 (8) (m) to (o), 108.17 (2b),
10 108.205 (1m) and 108.22 (1) (ad) 2. of the statutes; **relating to:** various changes
11 in the unemployment insurance law and providing penalties.

Analysis by the Legislative Reference Bureau

This bill makes various changes in the unemployment insurance law.
Significant provisions include:

BILL**BENEFIT CHANGES*****Determination of wages for purposes of partial unemployment benefits***

Under current law, with certain exceptions, if a claimant earns wages in a given week in employment covered by the unemployment insurance law, the first \$30 of the wages are disregarded and the claimant's weekly benefit payment is reduced by 67 percent of the remaining amount of wages earned. However, any amount that a claimant earns for services performed as a volunteer fire fighter, volunteer emergency medical technician, or volunteer first responder in any week does not reduce the claimant's benefit payment for that week. This bill discontinues the exclusion of amounts earned for volunteer fire fighter, volunteer emergency medical technician, and volunteer first responder services from partial unemployment benefit calculation. The bill also provides that wages earned in work not covered by the unemployment insurance law are included with other wages in calculating benefit reductions for partial unemployment benefits.

Benefit reductions due to certain suspensions, terminations, and leaves

Currently, if an employee is suspended from his or her employment, or if an employee is terminated by his or her employer because the employee is unable to do, or unavailable for, suitable work otherwise available with the employee's employer, or if an employee is granted family or medical leave the employee is ineligible for benefits for the week in which the suspension or termination occurs or the leave begins. This bill provides instead that an employee who is suspended or terminated due to unavailability for work or an employee who is granted family or medical leave is only ineligible to receive benefits for the portion of the week after which a suspension or termination occurs.

Self-employment disqualification

Currently, an individual who is self-employed is not eligible for benefits for any week in which the individual has worked at the self-employment unless the individual establishes to the satisfaction of the Department of Workforce Development (DWD) that he or she has made an active and bona fide search for employment. Claimants who are not self-employed are exempted from requirements to search for work if they are laid off by an employer and have a reasonable expectation of reemployment with the same employer. This bill deletes the self-employment disqualification, thereby making individuals who work at their self-employment eligible for benefits on the same basis as other claimants.

Voluntary termination of work

Currently, if an employee voluntarily terminates his or her work with an employer, the employee is generally ineligible to receive benefits until four weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination occurs equal to at least four times the employee's weekly benefit rate in employment covered by the unemployment insurance law of any state or the federal government. However, an employee may terminate his or her work and receive benefits without requalifying under this provision if the employee terminates his or her work with good cause attributable to his or her employer. In addition, an employee may voluntarily

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terminate his or her work and receive benefits without requalifying under this provision if the employee is transferred by his or her employer to work paying less than two-thirds of his or her immediately preceding wage rate with that employer, except that the employee is ineligible to receive benefits for the week of termination and the four next following weeks. This bill deletes the latter exception. Under the bill, if an employee's wages are substantially reduced by his or her employer, the employee may still be able to voluntarily terminate his or her employment and claim benefits without requalifying or waiting, if it is determined that the wage reduction constitutes good cause attributable to the employee's employer.

Employee status

Currently, to be eligible to claim benefits, an individual must, in addition to other requirements, be an "employee," as defined in the unemployment insurance law. Generally, an "employee" is an individual who performs services for an employer covered by the unemployment insurance law, whether or not the employer directly pays the individual. However, an individual is not an "employee" if the individual owns a business that operates as a sole proprietorship or if the individual is a partner in a business that operates as a partnership. This bill provides that these exclusions apply only with respect to services performed for a sole proprietorship or partnership, respectively.

TAX CHANGES***Uncollectible reimbursable benefits***

Currently, an employer that is a nonprofit organization may, in lieu of paying regular contributions (taxes) to the unemployment reserve fund, elect to reimburse the fund for the cost of benefits charged to its account. If a nonprofit organization that has elected reimbursement financing fails to reimburse the fund for the cost of benefits charged to its account and DWD is unable to collect the amount due, together with any interest and penalties, the fund must absorb these costs. Employers that elect reimbursement financing do not contribute to the payment of these costs. This bill provides that if, as of June 30 of any year, there is more than a total of \$5,000 due from nonprofit organizations for reimbursements of benefits paid on their behalf that DWD has determined to be uncollectible, DWD must assess all employers that are nonprofit organizations, except Indian tribes, for these costs, but shall not assess more than a total of \$200,000 in any single year. Under the bill, assessments are applied by DWD to each employer's taxable payroll for unemployment insurance purposes at a rate determined by DWD to be sufficient to reimburse the fund for uncollectible reimbursements paid on behalf of employers that are nonprofit organizations.

Treatment of professional employer organizations

Currently, an employer is generally liable for contributions (taxes) or benefit reimbursements based on an individual's employment if the individual is subject to the employer's direction or control over the performance of the individual's services. However, if an individual performs services for a client of a professional employer organization under a contract, the organization is liable for contributions or benefit reimbursements based on those services under certain specified conditions.

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Currently, a "professional employer organization" is an organization that contracts to provide the nontemporary, ongoing workforce of a client. Under this bill, an organization may qualify as a "professional employer organization" only if it contracts to provide the nontemporary, ongoing workforce of more than one client, and the majority of the organization's clients are not under the same ownership, management, or control as the organization, other than through the terms of the contract.

OTHER CHANGES***Electronic reporting***

Currently, employers must file separate quarterly reports of contributions and wages with DWD. Employer agents that file contribution reports on behalf of 25 or more employers must file the reports using an electronic medium approved by DWD. Employers that employ 100 or more employees must also file quarterly wage reports using an electronic medium approved by DWD. This bill requires each employer of 50 or more employees that does not use an employer agent to file its contribution reports to file those contribution reports electronically using the Internet on a form prescribed by DWD. The bill requires each employer agent that files contribution reports on behalf of less than 25 employers to file those reports electronically using the Internet on a form prescribed by DWD. The bill requires all employer agents to file all wage reports electronically using the Internet on a form prescribed by DWD. The bill also requires employers of 50 or more employees to file wage reports using an electronic medium approved by DWD. In addition, the bill makes an employer that is required to file its contribution reports electronically liable for a penalty of \$25 for each report that is not filed electronically in the form prescribed by DWD.

Successorship

Currently, if a business is transferred from one employer to another employer, the transferee may, under certain conditions, request that DWD treat it as a successor to the transferor for purposes of unemployment insurance experience, including contribution (tax) and benefit liability. DWD must treat the transferee as the successor to the transferor if the transferor and transferee are owned or controlled by the same interests. When a transferee is treated as a successor to a transferor, the contribution rates of the transferor and transferee are recomputed effective on January 1 of the year following the transfer. This bill requires DWD to treat the transferee as the successor to the transferor if the transferor and transferee are owned, controlled, or *managed* by the same interests. The bill also requires recomputation of the transferor's and transferee's contribution rates effective on the date of the transfer. The bill permits DWD to nullify a successorship if it finds that a substantial purpose of a business transfer was to obtain a reduced contribution rate for the transferee. In addition, the bill provides for punitive increases in contribution rates for employers, and creates both civil and criminal misdemeanor penalties for other persons, who knowingly make or attempt to make a false statement or representation to DWD in connection with an investigation to determine whether an employer qualifies to be considered a successor to the transferor of a business.

BILL***Coverage of certain AmeriCorps employees***

Currently, employees performing services for the federal AmeriCorps program are generally covered under the unemployment insurance law. This bill eliminates coverage for those services, except for services performed as a part of a professional corps program in which a public or private nonprofit employer pays the entire salaries of the employees. Under the bill, employers that provide these services are no longer subject to contribution requirements (the requirement to pay taxes) based upon these services, and claimants are no longer eligible to claim benefits based upon the performance of these services.

Failure of employers to provide information

Currently, if benefits are erroneously paid because an employer fails to provide correct and complete information on a report to DWD, any benefits that DWD recovers do not affect charges to the employer's account for the cost of those benefits. The bill provides, in addition, that during the period beginning on January 1, 2006, and ending on June 28, 2008, if benefits are erroneously paid because an employer fails to provide correct and complete information requested by DWD during a fact-finding investigation, but the employer later provides the requested information, charges to the employer's account for the cost of benefits paid before the end of the week in which a redetermination or an appeal tribunal decision is issued concerning benefit eligibility are not affected by the redetermination or decision.

Issuance of warrants against certain individuals

Currently, under certain conditions, an individual who holds at least 20 percent of the ownership interest in a corporation or limited liability company may be found to be personally liable for unemployment insurance liabilities of the corporation or company. Currently, if an employer has delinquent unemployment insurance liabilities, DWD may issue a warrant and file it with the clerk of circuit court for any county where real or personal property of the employer is found. The warrant constitutes a lien upon the property and is subject to execution through sale of the property. This bill provides that DWD may issue a warrant for the collection of any unemployment insurance liabilities for which an individual is found to be personally liable.

Treatment of limited liability companies

Currently, DWD treats a limited liability company as a corporation if the company files an election with the federal Internal Revenue Service to be so treated for federal tax purposes and files proof with DWD that the Internal Revenue Service has agreed to so treat the company. The change may affect the taxation of the wages paid to principal officers of the company and their eligibility for benefits. For benefit purposes, a change is effective on the same date that the Internal Revenue Service agrees to treat the company as a corporation or the date that proof of such treatment is filed with DWD, whichever is later. Under this bill, a change applies to benefit years (periods during which benefits are potentially payable) in existence on or beginning on or after the date that the federal Internal Revenue Service treats the company as a corporation for federal tax purposes if the benefit year to which the

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6A treatment is to be applied has not ended on the date that the company files proof of the federal treatment.

Enforcement of assessments against imposters

Currently, if any person makes a false statement or representation to obtain benefits in the name of another person, DWD may, by administrative action or by decision in an administrative proceeding, require the person to repay the benefits and may also penalize the person by levying an assessment against him or her in an amount not greater than 50 percent of the benefits wrongfully obtained. One of the ways by which DWD may collect such an assessment is to offset the amount of the assessment against any benefits that would otherwise be payable to the person. This process is called recoupment. This bill deletes the authority of DWD to collect these assessments by means of recoupment.

Charging of certain benefits for claimants enrolled in approved training

6B Currently, if a claimant who is enrolled in employment-related training approved by DWD is paid benefits for which the claimant would otherwise be ineligible because the claimant has terminated his or her work or failed to accept suitable work or recall to work and is unable to work or unavailable for work or has failed to meet work search requirements, the costs of the benefits is charged to the balancing account of the unemployment reserve fund (which is financed from contributions of all employers that are subject to a requirement to pay contributions) instead of to the account or accounts of the claimant's employer or employers. This bill applies this noncharging procedure only with respect to an employer from which the claimant terminated his or her work or refused to accept a recall to work.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 108.02 (12) (a) of the statutes is amended to read:
- 2 108.02 (12) (a) "Employee" means any individual who is or has been performing
- 3 services for pay for an employing unit, ~~in an employment~~, whether or not the
- 4 individual is paid directly by such the employing unit; except as provided in par. (b),
- 5 (bm), (c), (d), (dm) or (dn).
- 6 **SECTION 2.** 108.02 (12) (dm) of the statutes is amended to read:

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1 108.02 (12) (dm) Paragraph (a) does not apply to an individual who owns a
2 business that operates as a sole proprietorship with respect to services performed for
3 that business.

4 **SECTION 3.** 108.02 (12) (dn) of the statutes is amended to read:

5 108.02 (12) (dn) Paragraph (a) does not apply to a partner in a business that
6 operates as a partnership with respect to services performed for that business.

7 **SECTION 4.** 108.02 (15) (j) 5. and 6. of the statutes are amended to read:

8 108.02 (15) (j) 5. In any quarter in the employ of any organization exempt from
9 federal income tax under section 501 (a) of the internal revenue code, other than an
10 organization described in section 401 (a) or 501 (c) (3) of such code, or under section
11 521 of the internal revenue code, if the remuneration for such service is less than \$50;
12 or

13 6. By a nonresident alien for the period that he or she is temporarily present
14 in the United States as a nonimmigrant under 8 USC 1101 (a) (15) (F), (J), (M), or
15 (Q), if the service is performed to carry out the purpose for which the alien is admitted
16 to the United States, as provided in 8 USC 1101 (a) (15) (F), (J), (M), or (Q), or by the
17 spouse or minor child of such an alien if the spouse or child was also admitted to the
18 United States under 8 USC 1101 (a) (15) (F), (J), (M), or (Q) for the same purpose;
19 or

20 **SECTION 5.** 108.02 (15) (j) 7. of the statutes is created to read:

21 108.02 (15) (j) 7. By an individual who is a participant in the AmeriCorps
22 program, except service performed pursuant to a professional corps program as
23 described in 42 USC 12572 (a) (8).

24 **SECTION 6.** 108.02 (21e) (intro.) of the statutes is amended to read:

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1 108.02 (21e) PROFESSIONAL EMPLOYER ORGANIZATION. (intro.) "Professional
2 employer organization" means any person who contracts to provide the
3 nontemporary, ongoing employee workforce of ~~a client~~ more than one client under
4 a written leasing contract, the majority of whose clients are not under the same
5 ownership, management, or control as the person other than through the terms of
6 the contract, and who under contract and in fact:

7 SECTION 7. 108.04 (1) (b) 1. of the statutes is amended to read:

8 108.04 (1) (b) 1. While the employee is unable to work, or unavailable for work,
9 if his or her employment with an employer was suspended by the employee or by the
10 employer or was terminated by the employer because the employee was unable to do,
11 or unavailable for, suitable work otherwise available with the employer, except as
12 provided in par. (c);

13 SECTION 8. 108.04 (1) (b) 3. (intro.) of the statutes is amended to read:

14 108.04 (1) (b) 3. While the employee is on family or medical leave under the
15 federal family and medical leave act of 1993 (P.L. 103-3) or s. 103.10, and except as
16 provided in par. (c), until whichever of the following occurs first:

17 SECTION 9. 108.04 (1) (c) of the statutes is amended to read:

18 108.04 (1) (c) If a leave of absence under par. (b) 2. or a family or medical leave
19 under par. (b) 3. is granted to an employee for a portion of a week, or if an employee
20 is absent for only a portion of the available work in a week due to a suspension or
21 termination under par. (b) 1. that occurs after the beginning of a week, the employee's
22 eligibility for benefits for that partial week shall be reduced by the amount of wages
23 that the employee could have earned in his or her work had the leave not been
24 granted or had the suspension or termination not occurred. For purposes of this
25 paragraph, the department shall treat the amount the employee would have earned

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1 as wages in that work for that week as wages earned by the employee and shall apply
2 the method specified in s. 108.05 (3) (a) to compute the benefits payable to the
3 employee. The department shall estimate the wages that an employee would have
4 earned for a partial week if it is not possible to compute the exact amount of wages
5 that the employee would have earned for that partial week.

6 **SECTION 10.** 108.04 (1) (e) of the statutes is repealed.

7 **SECTION 11.** 108.04 (7) (f) of the statutes is repealed.

8 **SECTION 12.** 108.04 (13) (c) of the statutes is amended to read:

9 108.04 (13) (c) If an employer, after notice of a benefit claim, fails to file an
10 objection to the claim under s. 108.09 (1), any benefits allowable under any resulting
11 benefit computation shall, unless the department applies a provision of this chapter
12 to disqualify the claimant, be promptly paid. Except as otherwise provided in this
13 paragraph, any eligibility question in objection to the claim raised by the employer
14 after benefit payments to the claimant are commenced does not affect benefits paid
15 prior to the end of the week in which a determination is issued as to the eligibility
16 question unless the benefits are erroneously paid without fault on the part of the
17 employer. If, during the period beginning on January 1, 2006, and ending on June
18 28, 2008, an employer fails to provide correct and complete information requested by
19 the department during a fact-finding investigation, but later provides the requested
20 information, charges to the employer's account for benefits paid prior to the end of
21 the week in which a redetermination or an appeal tribunal decision is issued
22 concerning benefit eligibility are not affected by the redetermination or decision. If
23 benefits are erroneously paid because the employer and the employee are at fault,
24 the department shall charge the employer for the benefits and proceed to create an
25 overpayment under s. 108.22 (8) (a). If benefits are erroneously paid without fault

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1 on the part of the employer, regardless of whether the employee is at fault, the
2 department shall charge the benefits as provided in par. (d), unless par. (e) applies,
3 and proceed to create an overpayment under s. 108.22 (8) (a). If benefits are
4 erroneously paid because an employer is at fault and the department recovers the
5 benefits erroneously paid under s. 108.22 (8), the recovery does not affect benefit
6 charges made under this paragraph.

7 **SECTION 13.** 108.04 (13) (e) of the statutes is amended to read:

8 108.04 (13) (e) If the department erroneously pays benefits from one
9 employer's account and a 2nd employer is at fault, the department shall credit the
10 benefits paid to the first employer's account and charge the benefits paid to the 2nd
11 employer's account. Filing of a tardy or corrected report or objection does not affect
12 the 2nd employer's liability for benefits paid prior to the end of the week in which the
13 department makes a recomputation of the benefits allowable or prior to the end of
14 the week in which the department issues a determination concerning any eligibility
15 question raised by the report or by the 2nd employer. If, during the period beginning
16 on January 1, 2006, and ending on June 28, 2008, the 2nd employer fails to provide
17 correct and complete information requested by the department during a fact-finding
18 investigation, but later provides the requested information, the department shall
19 charge the cost of benefits paid prior to the end of the week in which a
20 redetermination or an appeal tribunal decision is issued regarding the matter to the
21 account of the 2nd employer. If the department recovers the benefits erroneously
22 paid under s. 108.22 (8), the recovery does not affect benefit charges made under this
23 paragraph.

24 **SECTION 14.** 108.04 (13) (g) of the statutes is created to read:

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1 108.04 (13) (g) During the period beginning on January 1, 2006, and ending on
2 June 28, 2008, if benefits are erroneously paid because an employer fails to provide
3 correct and complete information requested by the department during a fact-finding
4 investigation, the employer is at fault unless the department finds that the employer
5 had good cause for the failure to provide the information.

6 **SECTION 15.** 108.04 (16) (b) of the statutes is amended to read:

7 108.04 (16) (b) The department shall not apply any benefit disqualification
8 under sub. (1) (b) 1., ~~(2) (a) or (d)~~, (7) (c), or (8) (e) or s. 108.141 (3g) that is not the
9 result of training or basic education under par. (a) while an individual is enrolled in
10 a course of training or education that meets the standards specified in par. (a).

11 **SECTION 16.** 108.04 (16) (c) 2. of the statutes is amended to read:

12 108.04 (16) (c) 2. The department shall not apply benefit disqualifications
13 under sub. (1) (b) 1., ~~(2) (a) or (d)~~, (7) (c), or (8) (e) or s. 108.141 (3g) that are not the
14 result of the training while the individual is enrolled in the training.

15 **SECTION 17.** 108.05 (3) (a) of the statutes is amended to read:

16 108.05 (3) (a) Except as provided in pars. (b) and (c), if an eligible employee
17 earns wages in a given week, the first \$30 of the wages shall be disregarded and the
18 employee's applicable weekly benefit payment shall be reduced by 67% of the
19 remaining amount, except that no such employee is eligible for benefits if the
20 employee's benefit payment would be less than \$5 for any week. For purposes of this
21 paragraph, "wages" includes any salary reduction amounts earned that are not
22 wages and that are deducted from the salary of a claimant by an employer pursuant
23 to a salary reduction agreement under a cafeteria plan, within the meaning of 26
24 USC 125, and any amount that a claimant would have earned in available work
25 which is treated as wages under s. 108.04 (1) (a), ~~but excludes any amount that a~~

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1 ~~claimant earns for services performed as a volunteer fire fighter, volunteer~~
2 ~~emergency medical technician or volunteer first responder.~~ In applying this
3 paragraph, the department shall disregard discrepancies of less than \$2 between
4 wages reported by employees and employers.

5 **SECTION 18.** 108.068 (2) of the statutes is amended to read:

6 108.068 (2) The department shall treat a limited liability company that files
7 proof under sub. (1) as a corporation under this chapter beginning on the same date
8 that the federal internal revenue service treats the company as a corporation for
9 federal tax purposes, except that for benefit purposes the treatment shall apply on
10 ~~the same date that the internal revenue service applies the treatment or the date~~
11 ~~that proof is filed with the department, whichever is later~~ to benefit years in
12 existence on or beginning on or after the date that the federal internal revenue
13 service treats the company as a corporation for federal tax purposes if the benefit
14 year to which the treatment is to be applied has not ended on the date that the
15 company files proof under sub. (1).

16 **SECTION 19.** 108.09 (2) (bm) of the statutes is amended to read:

17 108.09 (2) (bm) In determining whether an individual meets the conditions
18 specified in s. 108.02 (12) (b) 2. a. or b. ~~or~~, (bm) ~~1. or 2. 3. or 4., or (c) 1.,~~ the department
19 shall not consider documents granting operating authority or licenses, or any state
20 or federal laws or federal regulations granting such authority or licenses.

21 **SECTION 20.** 108.09 (4s) of the statutes is amended to read:

22 108.09 (4s) EMPLOYEE STATUS. In determining whether an individual meets the
23 conditions specified in s. 108.02 (12) (b) 2. a. or b. ~~or~~, (bm) ~~1. or 2. 3. or 4., or (c) 1.,~~ the
24 appeal tribunal shall not take administrative notice of or admit into evidence

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1 documents granting operating authority or licenses, or any state or federal laws or
2 federal regulations granting such authority or licenses.

3 **SECTION 21.** 108.151 (4) (b) of the statutes is amended to read:

4 108.151 (4) (b) The fund's treasurer shall issue a receipt to the employer for its
5 deposit of assurance. Any assurances shall be retained by the fund's treasurer in
6 escrow, for the fund, until the employer's liability under its election is terminated,
7 at which time they shall be returned to the employer, less any deductions made under
8 this paragraph. The employer may at any time substitute assurances of equal or
9 greater value. The treasurer may, with 10 days' notice to the employer, liquidate the
10 assurances deposited to the extent necessary to satisfy any delinquent
11 reimbursements or assessments due under this section together with any interest
12 and any tardy filing fees due. The treasurer shall hold in escrow any cash remaining
13 from the sale of the assurances, without interest. The fund's treasurer shall require
14 the employer within 30 days following any liquidation of deposited assurances to
15 deposit sufficient additional assurances to make whole the employer's deposit at the
16 prior level. Any income from assurances held in escrow shall inure to and be the
17 property of the employer.

18 **SECTION 22.** 108.151 (7) of the statutes is created to read:

19 108.151 (7) UNCOLLECTIBLE REIMBURSEMENTS. (a) Except as provided in par. (e),
20 each employer that has elected reimbursement financing under this section and that
21 is subject to this chapter as of the date that a rate of assessment is established under
22 this subsection shall pay an assessment to the fund at a rate established by the
23 department under par. (b).

24 (b) The fund's treasurer shall determine the total amount due from employers
25 electing reimbursement financing under this section that is uncollectible as of June

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1 30 of each year. No amount may be treated as uncollectible under this paragraph
2 unless the department has exhausted all reasonable remedies for collection of the
3 amount, including liquidation of the assurance required under sub. (4). The
4 department shall charge the total amounts so determined to the uncollectible
5 reimbursable benefits account under s. 108.16 (6w). Whenever, as of June 30 of any
6 year, this account has a negative balance of \$5,000 or more, the treasurer shall
7 determine the rate of an assessment to be levied under par. (a) for that year, which
8 shall then become payable by all employers that have elected reimbursement
9 financing under this section as of that date.

10 (c) The rate of assessment under this subsection for each calendar year shall
11 be a rate, when applied to the payrolls of all employers electing reimbursement
12 financing under this section for the preceding calendar year, that will generate an
13 amount that, when added to any positive balance remaining in the uncollectible
14 reimbursable benefits account under s. 108.16 (6w), equals the total amount
15 determined to be uncollectible under par. (b), but not more than \$200,000 for any
16 year.

17 (d) Except as provided in par. (e), the rate of each employer's assessment under
18 this subsection for any calendar year is the product of the rate determined under par.
19 (c) multiplied by the employer's payroll for the preceding calendar year, as reported
20 by the employer under s. 108.17 (2) or, in the absence of reports, as estimated by the
21 department.

22 (e) If any employer would otherwise be assessed an amount less than \$10 for
23 a calendar year, the department shall, in lieu of requiring that employer to pay an
24 assessment for that calendar year, apply the amount that the employer would have
25 been required to pay to the other employers on a pro rata basis.

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1 (f) The department shall bill assessments to employers under this subsection
2 in the same manner as provided in sub. (5) (f) for the month of September in each
3 year, and the assessment is due for payment in the same manner as other payments
4 under sub. (5) (f). If any assessment is past due, the department shall assess interest
5 on the balance due under s. 108.22. If any employer is delinquent in paying an
6 assessment under this subsection, the department may terminate the employer's
7 election of reimbursement financing under this section as of the close of any calendar
8 year in which the employer remains delinquent.

9 **SECTION 23.** 108.16 (6w) and (6x) of the statutes are created to read:

10 **108.16 (6w)** The department shall maintain within the fund an uncollectible
11 reimbursable benefits account to which the department shall credit all amounts
12 assessed to employers under s. 108.151 (7).

13 **(6x)** The department shall charge to the uncollectible reimbursable benefits
14 account the amount of any benefits paid from the balancing account that are
15 reimbursable under s. 108.151 but for which the department does not receive
16 reimbursement after the department exhausts all reasonable remedies for collection
17 of the amount.

18 **SECTION 24.** 108.16 (8) (e) 1. of the statutes is amended to read:

19 **108.16 (8) (e) 1.** At the time of business transfer, the transferor and the
20 transferee are owned, managed, or controlled in whole or in substantial part, either
21 directly or indirectly by legally enforceable means or otherwise, by the same interest
22 or interests. Without limitation by reason of enumeration, it is presumed unless
23 shown to the contrary that the "same interest or interests" includes the spouse, child,
24 or parent of the individual who owned, managed or controlled the business, or any
25 combination of more than one of them.

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1 **SECTION 25.** 108.16 (8) (em) of the statutes is created to read:

2 108.16 (8) (em) If, after the transferee of a business has been deemed a
3 successor under par. (e), the department determines that a substantial purpose of the
4 transfer of the business was to obtain a reduced contribution rate, then the
5 department shall treat the transfer as having no effect for purposes of this chapter
6 and shall, retroactively to the date of the transfer, reassign to the transferor all
7 aspects of the transferor's account experience and liability that had been assigned
8 to the transferee, together with all aspects of the transferee's account experience
9 related to the transferred business, and shall recompute the transferor's
10 contribution rate as provided in par. (h).

11 **SECTION 26.** 108.16 (8) (h) of the statutes is amended to read:

12 108.16 (8) (h) The department shall determine or redetermine the contribution
13 ~~rate for a successor subject to this chapter immediately prior to the date of the~~
14 ~~transfer shall be redetermined, as of the applicable computation date, to apply to the~~
15 ~~calendar year following the date of transfer and rates for the transferor and the~~
16 ~~successor as of the date of the transfer of the business. The rates shall apply~~
17 ~~beginning on that date and shall thereafter be redetermined whenever required by~~
18 s. 108.18. For the purposes of s. 108.18, the department shall determine the
19 experience under this chapter of the successor's account by allocating to the
20 successor's account for each period in question the respective proportions of the
21 transferor's payroll and benefits which the department determines to be properly
22 assignable to the business transferred.

23 **SECTION 27.** 108.16 (8) (im) of the statutes is created to read:

24 108.16 (8) (im) Notwithstanding pars. (b) to (i), a transferee who is not subject
25 to this chapter on the date of transfer of a business shall not be deemed a successor

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1 to the transferor if the department determines that the transfer occurred solely or
2 primarily for the purpose of obtaining a lower contribution rate for the transferee
3 than the rate that would otherwise apply if the transferee were deemed a new
4 employer. In determining whether a business was transferred solely or primarily for
5 the purpose of obtaining a lower contribution rate for the transferee than the rate
6 that would otherwise apply, the department shall use objective factors, which may
7 include the cost of acquiring the business, whether the transferee continued the
8 business enterprise of the transferred business, the length of time that the business
9 enterprise was continued, or whether a substantial number of new employees were
10 hired for the performance of duties unrelated to the business activity conducted by
11 the transferor prior to the transfer.

12 **SECTION 28.** 108.16 (8) (m) to (o) of the statutes are created to read:

13 108.16 (8) (m) If any person knowingly makes or attempts to make a false
14 statement or representation to the department in connection with any investigation
15 to determine whether an employer qualifies to be deemed a successor under par. (e)
16 or (im) or any other provision of this chapter for the purpose of determining the
17 assignment of a contribution rate, or if any person knowingly advises another person
18 to do so, including by willful evasion, nondisclosure, or misrepresentation, the person
19 is subject to the following penalties:

20 1. If the person is an employer, then the department shall assign the employer
21 the highest contribution rate assignable under this chapter for the year, during
22 which the violation or attempted violation occurs and the 3 succeeding years, except
23 that if the department assigns the employer the highest contribution rate for any
24 such year under other provisions of this chapter or if the increase in the employer's
25 contribution rate under this subdivision would be less than 2 percent on its payroll

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1 for any year, then the department shall increase the employer's contribution rate by
2 2 percent on its payroll for each year in which a penalty applies under this
3 subdivision.

4 2. If the person is not an employer, the person may be required to forfeit not
5 more than \$5,000.

6 3. The person is guilty of a Class A misdemeanor.

7 (n) The department shall utilize uniform procedures to identify businesses that
8 are transferred under this subsection.

9 (o) Paragraphs (e) 1., (em), (h), (im), and (m) shall be interpreted and applied,
10 insofar as possible, to meet the minimum requirements of any guidance issued by or
11 regulations promulgated by the U.S. department of labor.

12 **SECTION 29.** 108.17 (2b) of the statutes is created to read:

13 108.17 (2b) The department shall prescribe a form and methodology for filing
14 contribution reports under sub. (2) electronically using the Internet. Each employer
15 of 50 or more employees, as determined under s. 108.22 (1) (ae), that does not use an
16 employer agent to file its contribution reports under this section shall file its
17 contribution reports electronically using the Internet on the form prescribed by the
18 department. Once an employer becomes subject to the reporting requirements under
19 this subsection, it shall continue to file its reports under this subsection unless that
20 requirement is waived by the department.

21 **SECTION 30.** 108.17 (2g) of the statutes is amended to read:

22 108.17 (2g) An employer agent that files reports under sub. (2) on behalf of less
23 than 25 employers shall file those reports electronically using the Internet on the
24 form prescribed by the department under sub. (2b). An employer agent that files
25 reports under sub. (2) on behalf of 25 or more employers shall file those reports using

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1 an electronic medium and format approved by the department. An employer agent
2 that becomes subject to the reporting requirement under this subsection shall file its
3 initial reports under this subsection for the 4th quarter beginning after the quarter
4 in which the employer agent becomes subject to the reporting requirement. Once an
5 employer agent becomes subject to the reporting requirement under this subsection,
6 the employer agent shall continue to file its reports under this subsection unless that
7 requirement is waived by the department.

8 **SECTION 31.** 108.18 (1) (a) of the statutes is amended to read:

9 108.18 (1) (a) ~~Each~~ Unless a penalty applies under s. 108.16 (8) (m), each
10 employer shall pay contributions to the fund for each calendar year at whatever rate
11 on the employer's payroll for that year duly applies to the employer pursuant to this
12 section.

13 **SECTION 32.** 108.18 (2) (d) of the statutes is amended to read:

14 108.18 (2) (d) No later than 90 days after the department issues an initial
15 determination that a person is an employer, any employer other than an employer
16 specified in par. (c), having a payroll exceeding \$10,000,000 in a calendar year may
17 elect that its contribution rate shall be one percent on its payroll for the first 3
18 calendar years with respect to which contributions are credited to its account. In
19 such case, the department shall credit the amount collected in excess of this amount
20 against liability of the employer for future contributions after the close of each
21 calendar year in which an election applies. If an employer qualifies for and makes
22 an election under this paragraph, the employer shall, upon notification by the
23 department, make a special contribution after the close of each quarter equivalent
24 to the amount by which its account is overdrawn, if any, for the preceding quarter.
25 The department shall credit any timely payment of contributions to the employer's

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1 account before making a determination of liability for a special contribution under
2 this paragraph. An employer does not qualify for an alternate contribution rate
3 under this paragraph at any time during which the employer's special contribution
4 payment is delinquent. An employer that is the transferee of a business enterprise
5 but does not qualify to be treated as a successor under s. 108.16 (8) (im) does not
6 qualify for an alternate contribution rate under this paragraph.

7 **SECTION 33.** 108.205 (1m) of the statutes is created to read:

8 108.205 (1m) The department shall prescribe a form and methodology for filing
9 reports under sub. (1) electronically using the Internet. Each employer agent shall
10 file its reports electronically using the Internet on the form prescribed by the
11 department.

12 **SECTION 34.** 108.205 (2) of the statutes is amended to read:

13 108.205 (2) All employers of ~~100~~ 50 or more employees, as determined under
14 s. 108.22 (1) (ae), shall file the quarterly report under sub. (1) using an electronic
15 medium approved by the department for such employers. An employer that becomes
16 subject to the reporting requirement under this subsection shall file its initial report
17 under this subsection for the 4th quarter beginning after the quarter in which the
18 employer becomes subject to the reporting requirement. Once an employer becomes
19 subject to the reporting requirement under this subsection, the employer shall
20 continue to file its quarterly reports under this subsection unless that requirement
21 is waived by the department.

22 **SECTION 35.** 108.22 (1) (ad) of the statutes is renumbered 108.22 (1) (ad) 1.

23 **SECTION 36.** 108.22 (1) (ad) 2. of the statutes is created to read:

24 108.22 (1) (ad) 2. An employer that is subject to the reporting requirements
25 under s. 108.17 (2b) and that fails to file a contribution report in accordance with s.

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1 108.17 (2b) may be assessed a penalty by the department in the amount of \$25 for
2 each report that is not filed in accordance with s. 108.17 (2b).

3 **SECTION 37.** 108.22 (1) (b) of the statutes is amended to read:

4 108.22 (1) (b) If the due date of a report or payment under s. 108.15 (5) (b),
5 108.151 (5) (f) or (7), 108.16 (8), 108.17, or 108.205 would otherwise be a Saturday,
6 Sunday, or legal holiday under state or federal law, the due date is the next following
7 day which is not a Saturday, Sunday, or legal holiday under state or federal law.

8 **SECTION 38.** 108.22 (1) (c) of the statutes is amended to read:

9 108.22 (1) (c) Any report or payment, except a payment required by s. 108.15
10 (5) (b) or 108.151 (5) (f) or (7), to which this subsection applies is delinquent, within
11 the meaning of par. (a), unless it is received by the department, in the form prescribed
12 by law or rule of the department, no later than its due date as determined under par.
13 (b), or if mailed is either postmarked no later than that due date or is received by the
14 department no later than 3 days after that due date. Any payment required by s.
15 108.15 (5) (b) or 108.151 (5) (f) or (7) is delinquent, within the meaning of par. (a),
16 unless it is received by the department, in the form prescribed by law, no later than
17 the last day of the month in which it is due.

18 **SECTION 39.** 108.22 (1m) of the statutes is amended to read:

19 108.22 (1m) If an employer owes any contributions, reimbursements or
20 assessments under s. 108.15 or 108.151, interest, fees, or payments for forfeitures or
21 other penalties to the department under this chapter and fails to pay the amount
22 owed, the department has a perfected lien upon the employer's right, title, and
23 interest in all of its real and personal property located in this state in the amount
24 finally determined to be owed, plus costs. Except where creation of a lien is barred
25 or stayed by bankruptcy or other insolvency law, the lien is effective when the

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1 department issues a determination of the amount owed under s. 108.10 (1) and shall
2 continue until the amount owed, plus costs and interest to the date of payment, is
3 paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it
4 shall become effective immediately upon expiration or removal of such bar or stay.
5 The perfected lien does not give the department priority over lienholders,
6 mortgagees, purchasers for value, judgment creditors, and pledges whose interests
7 have been recorded before the department's lien is recorded.

8 **SECTION 40.** 108.22 (2) of the statutes is amended to read:

9 108.22 (2) (a) 1. If any employing unit or any individual who is found personally
10 liable under sub. (9) fails to pay to the department any amount found to be due it in
11 proceedings pursuant to s. 108.10, provided that no appeal or review permitted
12 under s. 108.10 is pending and that the time for taking an appeal or review has
13 expired, the department or any authorized representative may issue a warrant
14 directed to the clerk of circuit court for any county of the state.

15 2. The clerk of circuit court shall enter in the judgment and lien docket the
16 name of the employing unit or individual mentioned in the warrant and the amount
17 of the contributions, interest, costs and other fees for which the warrant is issued and
18 the date when such copy is entered.

19 3. A warrant entered under subd. 2. shall be considered in all respects as a final
20 judgment constituting a perfected lien upon the employing unit's or individual's
21 right, title and interest in all real and personal property located in the county where
22 the warrant is entered.

23 4. The department or any authorized representative may thereafter file an
24 execution with the clerk of circuit court for filing by the clerk of circuit court with the
25 sheriff of any county where real or personal property of the employing unit or

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1 individual is found, commanding the sheriff to levy upon and sell sufficient real and
2 personal property of the employing unit or individual to pay the amount stated in the
3 warrant in the same manner as upon an execution against property issued upon the
4 judgment of a court of record, and to return the warrant to the department and pay
5 to it the money collected by virtue thereof within 60 days after receipt of the warrant.

6 (b) The clerk of circuit court shall accept, file and enter each warrant under par.
7 (a) and each satisfaction, release, or withdrawal under subs. (5), (6), and (8m) in the
8 judgment and lien docket without prepayment of any fee, but the clerk of circuit court
9 shall submit a statement of the proper fee semiannually to the department covering
10 the periods from January 1 to June 30 and July 1 to December 31 unless a different
11 billing period is agreed to between the clerk of circuit court and the department. The
12 fees shall then be paid by the department, but the fees provided by s. 814.61 (5) for
13 entering the warrants shall be added to the amount of the warrant and collected from
14 the employing unit or individual when satisfaction or release is presented for entry.

15 **SECTION 41.** 108.22 (8) (b) of the statutes is amended to read:

16 108.22 (8) (b) To recover any overpayment which is not otherwise repaid or
17 recovery of which has not been waived, ~~or any assessment under s. 108.04 (11) (em),~~
18 the department may recoup the amount of the overpayment from benefits the
19 individual would otherwise be eligible to receive, or file a warrant against the liable
20 individual in the same manner as is provided in this section for collecting delinquent
21 payments from employers, or both, but only to the extent of recovering the actual
22 amount of the overpayment and any costs and disbursements, without interest.

23 **SECTION 42.** 108.225 (1) (a) of the statutes is amended to read:

24 108.225 (1) (a) "Contribution" includes a reimbursement or assessment under
25 s. 108.15, 108.151, or 108.152, interest for a nontimely payment, fees, and any

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1 payment due for a forfeiture imposed upon an employing unit under s. 108.04 (11)

(c) or other penalty assessed by the department under this chapter.

2/3
24-2
4
SECTION 43. 108.24 (2) of the statutes is amended to read:

108.24 (2) Any Except as provided in s. 108.16 (8) (m), any person who
5 knowingly makes a false statement or representation in connection with any report
6 or as to any information duly required by the department under this chapter, or who
7 knowingly refuses or fails to keep any records or to furnish any reports or information
8 duly required by the department under this chapter, shall be fined not less than \$100
9 nor more than \$500, or imprisoned not more than 90 days or both; and each such false
10 statement or representation and every day of such refusal or failure constitutes a
11 separate offense.

12 **SECTION 44. Initial applicability.**

13 (1) The treatment of section 108.02 (12) (a) of the statutes first applies with
14 respect to employment after December 31, 2005.

15 (2) The treatment of section 108.02 (15) (j) 7. of the statutes first applies with
16 respect to employment after December 31, 2005.

17 (3) The treatment of section 108.02 (21e) (intro.) of the statutes first applies
18 with respect to determinations issued under sections 108.09 and 108.10 of the
19 statutes in the first week beginning in January 2006 or, with respect to
20 determinations that are appealed, to decisions issued under sections 108.09 and
21 108.10 of the statutes in the first week beginning in January 2006.

22 (4) The treatment of section 108.04 (1) (b) 1. and 3. (intro.) and (c) of the statutes
23 first applies with respect to suspensions and terminations of employment occurring
24 on the effective date of this subsection.

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1 (5) The treatment of section 108.04 (1) (e) of the statutes first applies with
2 respect to weeks of unemployment beginning on the effective date of this subsection.

3 (6) The treatment of section 108.04 (7) (f) of the statutes first applies with
4 respect to terminations of employment occurring on the effective date of this
5 subsection.

6 (7) The treatment of section 108.04 (13) (c), (e), and (g) of the statutes first
7 applies with respect to weeks of unemployment beginning on March 5, 2006.

8 (8) The treatment of section 108.04 (16) (b) and (c) 2. of the statutes first applies
9 with respect to weeks of unemployment beginning on the effective date of this
10 subsection.

11 (9) The treatment of section 108.05 (3) (a) of the statutes first applies with
12 respect to weeks of unemployment beginning on the effective date of this subsection.

13 (10) The treatment of section 108.09 (2) (bm) and (4s) of the statutes first
14 applies with respect to weeks of unemployment beginning on the effective date of this
15 subsection.

16 *Inv S*
17 *25-15* *(12) (11)* The treatment of sections 108.151 (4) (b) and (7), 108.16 (6w) and (6x),
18 108.22 (1) (b) and (c) and (1m), and 108.225 (1) (a) of the statutes first applies with
19 respect to payrolls distributed for the 2006 calendar year.

20 *(13) (12)* The treatment of sections 108.16 (8) (e) 1., (em), (h), (im), (m), and (n),
21 108.18 (1) (a) and (2) (d), and 108.24 (2) of the statutes first applies with respect to
22 transfers of businesses occurring after December 31, 2005.

23 *(14) (12)* The treatment of section 108.17 (2g) of the statutes first applies with
24 respect to reports filed under section 108.17 (2) of the statutes for the 2nd quarter
beginning after the quarter that includes the effective date of this subsection.

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1 ¹⁵
 ~~(12)~~(14) The treatment of section 108.205 (2) of the statutes first applies to
2 employers of 75 to 99 employees with respect to reports required under section
3 108.205 (2) of the statutes for the 2nd quarter beginning after the quarter that
4 includes the effective date of this subsection.

5 ¹⁶
 ~~(14)~~(15) The treatment of section 108.205 (2) of the statutes first applies to
6 employers of 50 to 74 employees with respect to reports required under section
7 108.205 (2) of the statutes for the 6th quarter beginning after the quarter that
8 includes the effective date of this subsection.

9 ¹⁷
 ~~(15)~~(16) The treatment of section 108.22 (2) of the statutes first applies with respect
10 to liabilities existing on the effective date of this subsection.

SECTION 45. Effective date.

11
12 (1) This act takes effect on the first Sunday after publication.

13
(END)

INS 6A:

Administrative levy fees

Currently, DWD may proceed against any 3rd party that has in its possession property that is subject to levy for payment of delinquent contributions or penalties administratively assessed by DWD, or for repayment of benefit overpayments. The 3rd party may deduct and retain a fee of \$5 from the amount collected in payment of the fee. This bill entitles a 3rd party to collect and retain a levy fee of \$5 for each levy in which a debt is satisfied by means of a single payment and \$15 for each levy in which a debt is satisfied by means of more than one payment. Under the bill, the fee is payable from the property levied against and is in addition to the amount of the levy.

INS 6B:

Admission of employment data system reports

Currently, the contents of a verified or certified report by a qualified expert presented by a party or DWD at an administrative hearing in a benefit claim case is prima facie evidence of the matter contained in the report if the report is otherwise competent and relevant, subject to such rules as DWD prescribes. If a report is accepted as prima facie evidence of the matter contained in the report, it is not necessary to present testimony of the expert who created the report in order to admit the report into evidence.

This bill provides, in addition, that if DWD maintains a database system consisting of employment data relating to employees and an employee of DWD creates a report from the system, the report also constitutes prima facie evidence as to the matters contained in the report in an administrative hearing on a benefit claim if DWD first provides to the parties an explanation of the system, the parties have an opportunity to review and object to the report, and the report sets forth all information used in creating the report and contains information that can be used to identify the departmental employee who created the report.

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2978/2ins
JTK.....

INS 12-20:

SECTION ~~11~~ 108.09 (4n) of the statutes is created to read:

108.09 (4n) EMPLOYMENT DATA SYSTEM REPORTS. If the department maintains a database system consisting of employment data relating to employees, and an employee of the department, including an individual who serves as an appeal tribunal, creates a report from the system, the report constitutes prima facie evidence as to the matters contained in the report in any proceeding under this section if:

(a) The department has provided to the parties an explanation of the system
* and the reports created from the system prior to admission of the report;

(b) The parties have been given the opportunity to review and object to the report, including the accuracy of any information used in creating the report, prior
* to its admission into evidence; and

(c) The report sets forth all of the information used in creating the report and contains information that can be used to identify the employee of the department who created the report.

INS 24-2:

SECTION ~~2~~ 108.225 (20) of the statutes is amended to read:

108.225 (20) COST OF LEVY. Any Whenever property is secured by means of a levy, any 3rd party in possession of the debtor's property is entitled to collect from the debtor a levy fee of \$5 for each levy in any case where property is secured through the levy in which a debt is satisfied by means of a single payment and \$15 for each

levy in which a debt is satisfied by means of more than one payment. The fee is payable from the property levied against and is in addition to the amount of the levy.

The 3rd party shall deduct the fee from the proceeds of may charge the fee to the debtor at the time the party transfers the proceeds of the levy to the department.

History: 1989 a. 77; 1997 a. 187, 283; 2001 a. 35, 109; 2003 a. 197.

25-15
INS 124-20:

(11) The treatment of section 108.09 (4n) of the statutes first applies with respect to appeals filed on the effective date of this subsection.

INS 26-10:

(18) The treatment of section 108.225 (20) of the statutes first applies with respect to levies served on the effective date of this subsection.

NONSTATS
INIT APP

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2978/2dn

JTK.....

Tom Smith:

This draft adds two items:

1. Administrative levy fees.
2. Admission of employment data reports.

Concerning the 2nd item, current law in s. 108.09 (4m), stats. allows admission of reports by experts in any proceeding under s. 108.09, stats. (benefit claim disputes). This draft contains parallel language in proposed s. 108.09 (4n). Although the instructions specified that the employment data system reports under proposed s. 108.09 (4n) should be admissible in any proceeding under ch. 108, stats., it did not make sense to me to apply this provision differently than the existing law that it parallels. If you do not agree, please let me know.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2978/2dn
JTK:wlj:jf

August 22, 2005

Tom Smith:

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Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

108.105 Suspension of agents. (1) The department may suspend the privilege of any agent to appear before the department at hearings under this chapter for a specified period if the department finds that the agent has engaged in an act of fraud or misrepresentation or repeatedly failed to comply with departmental rules, or has engaged in the solicitation of a claimant solely for the purpose of appearing at a hearing as the claimant's representative for pay. ~~Prior to imposing a suspension under this section, the secretary of workforce development or the secretary's designee shall conduct a hearing concerning the proposed suspension. The hearing shall be conducted under ch. 227 and the decision of the department may be appealed under s. 227.52.~~

(2) The department may suspend the privilege of an agent to act as an employer's representative under this chapter for up to 12 months if:

- (a) The agent fails to provide correct and complete information requested by the department during a fact finding investigation, and
- (b) The agent fails to provide the complete and correct requested information on at least 10 occasions involving separate fact finding investigations during a 12-month period.

(3) Prior to imposing a suspension under this section, the secretary of workforce development or the secretary's designee shall conduct a hearing concerning the proposed suspension. The hearing shall be conducted under ch. 227 and the decision of the department may be appealed under s. 227.52.